

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH WAKE CITIZENS ASSOCIATION,)	
et al.)	
)	
<i>Plaintiffs,</i>)	
)	No. 5:15-cv-156
v.)	
)	
WAKE COUNTY BOARD OF ELECTIONS,)	
)	
<i>Defendant.</i>)	
CALLA WRIGHT, et al.)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	No. 5:13-cv-607
)	
STATE OF NORTH CAROLINA, et al.)	
)	
<i>Defendant.</i>)	
_____)	

DEFENDANT’S RESPONSE TO JULY 8, 2016 ORDER

Defendant Wake County Board of Elections (“WBOE”) respectfully submits the following response to this Court’s Order entered on July 8, 2016 (D.E.¹ 78).

Applicable Deadlines

A calendar of the applicable 2016 election deadlines, with citations to the applicable election laws in Chapter 163 of the North Carolina General Statutes, is attached as Exhibit A to the Declaration of Gary Sims (“Sims Decl.”).

These election deadlines currently apply to the WBOE unless they are modified by the North Carolina State Board of Elections (“SBOE”) pursuant to its statutory authority. The SBOE

¹ Cites to “D.E.” refer to docket entries in 5:15-cv-156.

has authority to issue temporary interim rules modifying certain deadlines in response to a court order as long as such rules are consistent with Chapter 163 (*see* Notice from Kimberly Strach (D.E. 81)). The WBOE cannot presently predict whether and how such interim rules would come into play with respect to any modifications to the electoral districts that were declared to be invalid by the Fourth Circuit. Absent such modifications, the WBOE is without authority to adopt or devise a different election schedule.

Regarding the specific deadlines requested by the Court, the WBOE highlights the following:

1. Filing Periods.

(a) The filing period for election to the Wake County Board of County Commissioners ended on **December 21, 2015**. *See* S.L. 2015-258, §2(b).

(b) The filing period for the Wake County Board of Education began on June 13, 2016 and ended on **July 1, 2016**. *See* S.L. 2013-110, § 2.

(c) The date by which an unaffiliated candidate had to petition to have his name printed on the general election ballot was **June 24, 2016**. *See* G.S. § 163-122 (stating deadline as last Friday in June preceding the general election).

2. Qualification Periods. Upon the receipt of a notice of candidacy, the WBOE immediately inspects the registration records of the county to determine whether the candidate meets the constitutional or statutory qualifications for office. *See* G.S. § 163-106(g); *see also* G.S. § 163-127.2 (providing for 10-day period to challenge a candidate's qualifications).

3. Deadline to Request a Write-In Option. The date by which individuals may request that space be added to a ballot for a write-in option for a particular office is currently **August 10**,

2016. *See* G.S. § 163-123(c) (“These petitions must be filed on or before noon on the 90th day before the general election . . .”).

4. Military, Overseas and Other Absentee Ballots. The date when military, overseas, and other absentee ballots must be mailed is currently **September 9, 2016**. G.S. §§ 163-227.3 (absentee ballots); 163-258.9 (transmission of military-overseas ballots). The SBOE may modify this deadline in certain circumstances and subject to federal requirements. *See* G.S. § 163-22(k); *see also* 52 U.S.C. § 20302 (federal requirements for military and overseas absentee ballots). To date, the SBOE has not exercised such authority with respect to the November 8, 2016 election. *See* Sims Decl. ¶ 7.

5. Printing Ballots. Ballots are printed between the deadline to request a write-in candidacy option (**August 10, 2016**) and the deadline for mailing military, overseas and other absentee ballots (**September 9, 2016**). During this 30-day time period, the WBOE must verify the content to be printed on the ballots, prepare and test ballot templates, print and test ballots, and obtain appropriate certifications or approvals from the State Board of Election. *See* Sims Decl. ¶¶ 26–30.

6. Early Voting. Early voting for the General Election begins on October 27, 2016. *See* G.S. § 227.2(b) (one-stop voting begins on the second Tuesday before the election).

* * *

The critical deadline currently in place with respect to the General Election is **August 10, 2016**, which is the deadline for petitioning for space on the ballot for a write-in candidate. That is the last act necessary to begin the preparation of ballots in anticipation of complying with the date to mail military, overseas and absentee ballots by the current deadline of **September 9, 2016**.

Impact of Deadlines on Affected Elections

1. Board of County Commissioners Numbered Districts. There are 3 seats up for election for the Wake County Board of County Commissioners on November 8, 2016. Those seats are residency districts 4, 5, and 6 used by the Wake County Board of County Commissioners in the 2014 election from which candidates were elected at-large (“2014 Districts”). *See* S.L. § 2015-4, § 1(b). The primary election for these seats was scheduled for March 15, 2016, but those races were uncontested. The WBOE is prepared to proceed with the at-large election for these three residency districts.

2. Board of County Commissioners Lettered Districts. If revisions are made to lettered districts A and B, it will not be feasible to hold a primary election for the Wake County Board of County Commissioners for those revised districts in time for the General Election. In order for a primary election to be held before August 10, 2016, the WBOE would need to do all of the following before August 10, 2016: (i) receive a revised district map² from the General Assembly, the SBOE, or the Court, (ii) code revised districts in order to identify the addresses within each district,³ (iii) provide a notice of a new filing period for the revised districts so that individuals can identify and assess their districts for purposes of a potential candidacy, (iv) open and close a candidate filing period, (v) provide a notice of election, and (vi) hold a primary election, including an early voting period, and canvass the results of that election. *See* Sims Decl. ¶¶ 16–

² Receipt of a “map” refers to a shape file that includes the shape of the district boundaries as an overlay to the map of the county. If the WBOE does not receive a shape file map, it will need to coordinate with the county GIS department to generate a shape file map before coding the new districts. *See* Sims Decl. ¶ 23.

³ The time required to code the districts would depend upon the amount of changes made to the districts and the nature of those changes. *See* Sims Decl. ¶ 23.

21. The WBOE understands from the SBOE that a truncated or expedited candidate filing period is typically at least one week. *See* Sims Decl. ¶ 16.

3. Board of Education. In order for elections to be held on November 8, 2016, for revised districts for the Wake County Board of Education, the WBOE would need to do all of the following before August 10, 2016: (i) receive a revised district map from the General Assembly, the State Board of Elections, or the Court, (ii) code revised districts in order to identify the addresses within each district, (iii) provide a notice of a new filing period for the new districts so that individuals can identify and assess their districts for purposes of a potential candidacy, and (iv) open and close a candidate filing period.

The WBOE does not have further views on the propriety of the effect of an injunction that would bar the use in the November 2016 election of the plans that the Fourth Circuit invalidated, except that (i) it is not feasible to hold a new primary election for revised lettered districts A and B for the Board of County Commissioners in time for the November 8, 2016 election, and (ii) any revised districts for the Wake County Board of Education would need to be drawn, implemented, and subject to reasonable notice and filing periods before the current deadline of August 10, 2016, in accordance with authorization and instructions from the SBOE.

Given the election deadlines currently in place, the SBOE's authority to provide interim rules and other modifications in response to a Court order, and the WBOE's duty to follow such rules and modifications, the WBOE will take all necessary and feasible steps to comply with, and implement, any schedule adopted by the Court or the SBOE regarding a Court-ordered remedial plan.

Respectfully submitted the 18th of July, 2016.

/s/ Charles F. Marshall

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using the CM/ECF system to the following:

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Respectfully Submitted,

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